

Appl. No. 09/926,763  
Amdt. dated May 24, 2005  
Reply to Office action of February 24, 2005

**REMARKS/ARGUMENTS**

In this latest Office Action, all pending claims, including claims directed to subject matter previously indicated as allowable, were rejected as being obvious in view of prior art. Withdrawal of the previous indication of allowable subject matter was explained as being necessary in view of newly discovered prior art. The only newly cited prior art in this latest Office Action appears to be U.S. Pat. No. 4,951,334 (Maier).

The Maier reference was relied on in various combinations with previously cited art to reject each of the pending claims. More particularly, claims 1-3, 5, 6, 8/1, 8/3 and 9-12 were rejected by the Examiner under 35 USC 103(a) as being unpatentable over U.S. Pat. No. 5,575,534 (Yu), in view of U.S. Pat. No. 4,951,334 (Maier). Claims 14-16, 18, 19, 21-25 and 39-45 were also rejected under 35 USC 103(a) as being unpatentable over Yu, in view of Maier. Claims 26-14 and 26/16 were also rejected under 35 USC 103(a) as being unpatentable over Yu, in view of Maier, and further in view of Congleton.

In addition, claims 35-49 were rejected under 35 USC 112 for failing to particularly point out and distinctly claim the subject-matter which applicant regards as the invention. Claim 42 was rejected as being redundant for failing to further limit claim 39, from which it depends.

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**Remarks Regarding Amendments**

**In the Claims:**

Claim 39 has been amended to clarify the claimed subject matter by replacing language that might suggest positively claiming the floor in combination with the chair, and instead referring to a "floor contacting portion" of the frame of the chair. Also, in claim 39 the term "user" has been replaced with "person" to have a proper antecedent.

Claim 40 has been amended to be consistent with claim 39. Claim 42 has been cancelled.

Applicant submits that these amendments do not add new matter to the application.

**Remarks Regarding Obviousness Rejections**

The Examiner stated that newly cited reference Maier teaches configuring a seating assembly with a front-to-back extent of a second support surface (32) being approximately equal to the front-to-back extent of the first support surface (16).

In rejecting independent claim 1 of the present application, the Examiner stated that it would have been obvious to one skilled in the art to modify Yu in view of

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Maier by configuring the front-to-back extent of the second support surface (presumably surface 212 of Yu) as approximately equal to the front-to-back extent of the first support surface (presumably surface 211 of Yu) in order to enhance user support and comfort.

Applicant submits that Maier does not teach a seat for a chair having first and second support surfaces for independently supporting a person's sit bones and thighs, respectively, as claimed in claim 1 of the present application. In fact, Maier does not teach a weight-bearing seat at all, but merely discloses a cushion (10) adapted to be placed on a weight-bearing seat. The cushion (10) is compressible throughout, being made of layers of foam material (see, for example, col. 2, line 62-col. 3, line 10; and col. 4, lines 44-49). Maier teaches that the cushion (10) is portable so that a user can carry the cushion and deploy it when occupying a seat (col. 1, lines 60-63). The lower surface of the cushion (10) is flat, as illustrated by the underside of bottom layer (20), which would presumably adapt the cushion (10) for use on a weight-bearing seat having a single, generally flat, upper surface.

Yu has a cushion element (or seat pan) 210 (Fig. 16) made of elastic material (col. 13, lines 20-24). The cushion element 210 is mounted on a seat support plate 250, made of plate material (col. 13, lines 25-26). The seat support plate 250 includes a pelvic support plate 251 and a thigh support plate 252 inclined relative to each other and adapted to receive corresponding pelvic support 211 and thigh support 212 portions of the cushion element 210. The underside of the cushion element 210 is not a flat continuous surface, but has a generally flat portion (corresponding to the underside of pelvic support 211) and an inclined portion (corresponding to the thigh support 212).

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Applicant respectfully submits that the combination of Yu and Maier to arrive at the invention defined by claim 1 of the present invention cannot possibly be considered obvious. Upon contrived instruction to combine the references, a person skilled in the art might attempt to substitute the cushion element 210 of Yu with the cushion 10 of Maier, but even such combination would not yield the presently claimed invention since Maier's cushion 10 (with its flat underside) would seem to fit only as one of the portions 211, 212 of Yu's cushion element 210, or Maier's cushion 10 would need to fold over the edge between the portions 211 and 212, which would eliminate the very geometric interrelationship of Maier's cushion relied on by the Examiner to support the obviousness rejection. Accordingly, Applicant respectfully submits that the obviousness rejection is defective and withdrawal of the rejection is respectfully requested.

Additionally, Applicant submits that neither reference contains any teaching, suggestion, or incentive for their combination as set out by the Examiner in rejecting claim 1. Such a suggestion or motivation is required to establish a proper obviousness rejection (*ACS Hospital Systems, Inc. v. Montefiore Hospital* (Fed. Cir. 1984); also *In re Geiger* (Fed. Cir. 1987)). Applicant respectfully submits that the absence of such suggestion or incentive is a further defect in the obviousness rejection.

Maier does disclose a cushion (10) having an upper surface that includes a tapered section (52) and a relatively flat horizontal section (50) (col. 5, lines 4-5), but Maier provides no teaching of any advantages or significance of such tapering or the relative front-to-back extents of the horizontal and tapered portions. Maier also fails to teach or make any mention of providing a chair with

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a pelvic support and a thigh support. Applicant submits that such independent supporting functions would not in any way be achieved by use of Maier's cushion (10), because, as would be readily apparent to one skilled in the art, upon use of the cushion (10), the uppermost surfaces of the flat and tapered sections (50) and (52) would lose any relative incline upon compression by the weight of a user, since such weight would tend to compress or flatten the cushion (10) against the upper surface of a seat on which the cushion (10) has been deployed. While the thickness of the stiffer, intermediate layer (18) is perhaps greater towards the rear portion (52) of the cushion (10), any possibility of the rear portion (100) maintaining a greater height than the forward portion (52) under load is severely undermined by the presence of the aperture (26). In other words, flattening of the cushion (10) would be exaggerated in the rearward (flat) horizontal section (50) thereof, due to the absence of material in the U-shaped aperture 26. Maier teaches providing an aperture 26 is "an essential part of the invention", enabling a person to sit on cushion (10) without exerting pressure on the Ischial region (col. 6, lines 1-5), which reinforces the position that Maier's teaching is not directed to a weight supporting seat having distinct pelvic and thigh supporting portions. Neither Yu nor Maier contain any suggestion or incentive for combining the references, and Applicant respectfully submits that for this additional reason, the obviousness rejection ought to be withdrawn.

Independent claims 14 and 39 include similar limitations regarding independent support thigh and sit bone support surfaces having approximately equal front-to-back extents, as included in independent claim 1. Applicant submits that claims 14 and 39 are allowable for the same reasons as argued above with respect to claim 1.

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The dependent claims pending in the application depend, either directly or indirectly, from one of the independent claims 1, 14, or 39, which, Applicant submits, are allowable for the reasons set out above. Applicant submits that the pending dependent claims are therefore allowable in that they depend from an allowable base claim.

**Remarks Regarding S.112 Rejections**

Applicant respectfully submits that the test for definiteness under 35 USC 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification" *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, (Fed. Cir. 1986). "Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the Examiner might desire" (see MPEP 2173.02).

In view of the above, Applicant respectfully submits that the language of former claim 39 was of sufficient clarity to enable one skilled in the art to understand that the claim is directed to a chair, rather than to a chair in combination with a floor. The claimed invention provides new and useful advantages that, Applicant submits, can be most easily explained and understood with reference to a readily recognized element of the environment in which the invention is adapted to be used, namely, a floor on which the chair is adapted to rest. As the Examiner noted, the term "a floor" was introduced in former claim 39 without being positively claimed as an element of the invention, and Applicant respectfully submits that subsequent reference to "the floor" with the definite article would not cause confusion in the mind of one of ordinary skill in the art as to the scope of the invention. Nevertheless, to facilitate allowance of the present application,

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Applicant has amended claim 39 to recite a frame having "a floor contacting portion", and referring back to "the floor contacting portion" of the frame rather than to a floor on which the chair is adapted to rest.

Claims 40, 41, and 43-45 have been amended to be consistent with amended claim 39. Applicant submits that claims 39-41 and 43-45 now satisfy the requirements of 35 USC 112, second paragraph.

Claim 42 was rejected as being redundant. Applicant thanks the Examiner for noting this deficiency. Since the subject matter of claim 42 had been incorporated into claim 39, claim 42 no longer presented any further limitations to its base claim. Claim 42 has been cancelled.

Applicant submits that in view of all of the above, the present application is now in condition for allowance. Early indication to that effect is respectfully requested.

If additional fees are required, please charge the fees to our Deposit Account No. 02-2095.

Respectfully submitted,

CROTEAU, ET AL.

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